# In the United States Bankruptcy Court for the Middle District of Tennessee Cookeville Division

IN RE:	)	
	)	BK NO 09-08974-KL2-11
TRI STAR ALUMINUM, L.P.,	)	
DEBTOR IN POSSESSION	j	

#### NOTICE OF MOTION TO APPOINT CHAPTER 11 TRUSTEE

THE DEADLINE FOR FILING A TIMELY RESPONSE IS: December 14, 2009

IF A RESPONSE IS TIMELY FILED, THE HEARING WILL BE: <u>January 28, 2010 at 9:30 a.m., in</u>
L.Clure Morton Federal Bldg. & Post Office, 9 Broad St., Cookeville, TN 38501

The United States Trustee for the Middle District of Tennessee, Region 8, has asked the court for the following relief: **Appointment of a Chapter 11 Trustee.** 

YOUR RIGHTS MAY BE AFFECTED. If you do not want the court to grant the attached motion, or if you want the court to consider your views on the motion, then on or before **December 14, 2009**, you or your attorney must:

1. File with the court your written response or objection explaining your position at:

Electronically: https://ecf.tnmb.uscourts.gov (Required for registered Filers and Users who have

accepted electronic notice in this case).

By Mail: US Bankruptcy Court, PO Box 24890, Nashville, TN 37202-489090 In Person: US Bankruptcy Court, 701 Broadway, 1<sup>st</sup> Floor, Nashville, TN

(Monday - Friday, 8:00 A.M. - 4:00 P.M.)

- Your response must state that the deadline for filing responses is December 14, 2009, the date
  of the scheduled hearing is January 28, 2010 and the motion to which you are responding is
  Motion to To Appoint Trustee. If you want a file stamped copy returned, you must include
  an extra copy and a self-addressed, stamped envelope.
- 3. You must also mail a copy of your response to:
  Beth Roberts Derrick, Assistant United States Trustee, 318 Customs House, 701 Broadway,
  Nashville, TN 37203 and on the debtor(s), the debtor(s)'s attorney and the Chapter 7 Trustee
  (at the addresses reflected on the Certificate of Service attached to the motion).

If a timely response is filed, the hearing will be held at the time and place indicated above. **THERE WILL BE NO FURTHER NOTICE OF THE HEARING DATE.** You may check whether a timely response has been filed by calling the Clerk's office at 615-736-5584 or viewing the case on the Court's web site at <www.tnmb.uscourts.gov>. If you received this notice by mail, you may have three additional days in which to file a timely response under Rule 9006(f) of the Federal Rules of Bankruptcy Procedure.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Signature: /s/ Beth Roberts Derrick

Name: BETH ROBERTS DERRICK 7138
Address: Office of the United States Trustee

318 Customs House, 701 Broadway

Nashville, TN 37203 Tel: (615) 736-2254 Fax: (615) 736-2260

Email: Beth.R.Derrick@usdoj.gov

# IN THE UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF TENNESSEE COOKEVILLE DIVISION

IN RE:	)	
	)	BK NO 09-08974-KL2-11
TRI STAR ALUMINUM, L.P.,	)	
DEBTOR IN POSSESSION.	j	

#### U.S. TRUSTEE'S MOTION TO APPOINT CHAPTER 11 TRUSTEE

Pursuant to 11 U.S.C. §§ 307 and 1104 and Rules 2007.1 and FRBP 9014, the U.S. Trustee moves for the appointment of a chapter 11 trustee in this case for the following reasons:

- The Debtor filed a voluntary chapter 11 bankruptcy case on August 7, 2009, and remains in possession of the property of the estate.
- 2. A plan and disclosure statement were filed on September 18, 2009. The plan, in summary, provided for a 10 percent distribution to general unsecured creditors over five years, payment of secured debt over varying periods of time, and transfer of ownership to two current management persons for no consideration. After objections by the Unsecured Creditors Committee, the largest unsecured creditor and the United States Trustee, the plan and disclosure statement were withdrawn by notice filed November 10, 2009.
- 3. The disclosure statement and plan provided that a new entity would be created to hold the equity ownership of the debtor and that the new equity would be owned by Joe Levanowicz (50 percent); Robert Gonzales (23.75 percent); Steve Curnutte (23.75 percent); and Will Eckstein (2.5 percent).

  Mr. Levanowicz is currently an officer of the company and Mr. Gonzales is the chief restructuring officer. Upon information and belief, Mr. Curnutte and

- Mr. Eckstein are business associates of Mr. Gonzales.
- 4. The United States Trustee was recently contacted by the President of an aluminum company in Toronto, Canada and advised that he is interested in purchasing the assets or stock of the debtor. He further advised that he had previously expressed an interest to Mr. Levanowicz and Mr. Gonzales but was not encouraged to pursue sale negotiations. However, it appears now that the Debtor is being responsive to the inquiries of the company.
- 5. The disclosure statement did not contain historical information from which to determine the feasibility of the projections in support of the plan. The last monthly operating report filed (for the period September 2009) indicates the company is cash flowing; however, no payments on secured debt are presently being made. The monthly operating report for the month ending October 2009 has not been filed as of November 23, 2009.
- 6. The U.S. Trustee has requested additional information regarding the accounts payables shown on the August 2009 report. The August 2009 report has not been amended; the September 2009 report does not contain the requested information.
- 7. Given the interest of some of the management in obtaining ownership of the company, it would be in the best interests of the estate and creditors if a trustee were appointed. *In re Cajun Electric Power Cooperative, Inc.*, 74 F.3d 599 (5<sup>th</sup> Cir. 1996)(Withdrawing part of prior decision and citing to dissent of prior opinion at 69 F.3d 746 and holding actual conflicts of interest can constitute "cause" for appointment of chapter 11 trustee).

8. Moreover, given the specialized nature of the Debtor, a trustee would provide more experience in the marketing and sales aspects of the case.

WHEREFORE, the U.S. Trustee requests that the United States Trustee be directed to appoint a trustee in this case and for such other relief as is appropriate.

Respectfully submitted,

RICHARD F. CLIPPARD U. S. TRUSTEE, REGION 8

/s/ Beth Roberts Derrick

Beth Roberts Derrick, BPR 7138 Assistant U.S. Trustee 701 Broadway, Suite 318 Nashville, TN 37203 (615)736-2254

Fax: 615-736-2260 Beth.r.derrick@usdoj.gov

### **CERTIFICATE OF SERVICE**

It is hereby certified that on November 24, 2009, a true and correct copy of the foregoing has been sent via electronic mail to all registered users in this case and placed in the U.S. Mail, postage prepaid, addressed to the following:

Mr. Elliott Warner Jones, Sr. Drescher & Sharp PC 1720 West End Avenue Suite 300 Nashville, TN 37203

Mr. Daniel Hays Puryear Smythe & Puryear 144 Second Avenue Suite 333 Nashville, TN 37201

/s/ Beth Roberts Derrick
Beth Roberts Derrick

## **CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of this Motion and Notice was served on all creditors on the mailing matrix on file with the court by placing a copy in the United States mail on November 24, 2009. An electronic copy was sent to all registered users in this case on November 24,2009.

/s/ Beth Roberts Derrick	
Beth Roberts Derrick	

UNITED STATES BANKRUPTCY COURT MIDDLE DISTRICT OF TENNESSEE COOKEVILLE DIVISION

In re:

TRI STAR ALUMINUM CO.,

Debtor.

Case No. 09-08974-KL2-11

ORDER DIRECTING THE APPOINTMENT OF CHAPTER 11 TRUSTEE

11 Trustee. Notice of the motion was properly served in accordance with Federal Rule of

This matter is before the Court on the United States Trustee's Motion to Appoint Chapter

Bankruptcy Procedure 2002 and Local Bankruptcy Rule 9013-1. The 20-day objection period

referenced in the motion has expired. The Debtor has not filed a response to the motion or the

objection has been overruled or withdrawn, therefore,

IT IS ORDERED that the United States Trustee appoint a chapter 11 trustee in this case.

This order was signed and entered electronically as indicated at the top of the first page.

Submitted by:

RICHARD F. CLIPPARD,

UNITED STATES TRUSTEE, REGION 8

/s/ Beth Roberts Derrick

**BETH ROBERTS DERRICK 7138** 

Office of the United States Trustee

318 Customs House, 701 Broadway

Nashville, TN 37203

Tel: (615) 736-2254

Fax: (615) 736-2260

Email: Beth.R.Derrick@usdoj.gov

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Label Matrix for local noticing 0650-2
Case 2:09-bk-08974
MIDDLE DISTRICT OF TENNESSEE
Cookeville
Tue Nov 24 15:18:52 CST 2009
ALLEY-CASSETTY TRUCKING
C/O JOEL E. JORDAN
3326 ASPEN GROVE DRIVE
SUITE 604
FRANKLIN, TN 37067-4858

DEKALB COMMUNITY BANK WILSON BANK & TRUST PO BOX 768 LEBANON, TN 37088-0768

Tri Star Aluminum Co., L.P. 96 Industrial Rd Alexandria, TN 37012

ACTON MOBILE INDUSTRIES 8007 CORPORATE DRIVE SUITE A BALTIMORE, MD 21236-4905

APPLIED INDUSTRIAL TECH. DIXIE INC C/O BETH ARVAI ONE APPLIED PL CLEVELAND OHIO 44115-5056

Airgas Mid America PO Box 802615 Chicago IL 60680-2615

Alley-Cassetty Brick c/o Joel E. Jordan 3326 Aspen Grove Drive, Suite 604 Franklin TN 37067-4858

Applied Industrial Technologies 22510 Network Place Chicago IL 60673-1225

BOBCAT OF NASHVILLE 401 W OUTER RD VALLEY PARK MO 63088-2031 AKEL ENVIRONMENTAL RESOURCES, LLC 504 AUTUMN SPRINGS CT #28 FRANKLIN, TN 37067-2849

Baker Iron & Metal Co., Inc. c/o Daniel H. Puryear, Esq. 144 Second Avenue North Suite 300 Nashville, TN 37201-1938

Intrametco Corporation
Baker Donelson Bearman Caldwell & Berkow
Attn: Courtney H. Gilmer
211 Commerce Street
Suite 1000
Nashville, TN 37201-1819
701 Broadway Room 170
Nashville, TN 37203-3944

AFLAC Attn: Remittance Processing

1932 Wynnton Rd Columbus GA 31999-0797

Acton Mobile Industries Inc. PO Box 758689 Baltimore MD 21275-8689

Alan's Industrial Waste Services Inc. PO Box 214 Ridgely TN 38080-0214

Alley-Cassetty Trucking 711 Fesslers Ln PO Box 23305 Nashville TN 37202-3305

Arkansas Aluminum Alloys Attn.: Timothy R. McGrath 4400 Malvern Rd. Hot Springs National Park AR 71901-8508

BSA 455 Oak Grove Albertville AL 35951-6125 ALAN'S INDUSTRIAL WASTE SERVICES, INC. C/O JOE WEYANT, ESQ. FEDERAL BUILDING 116 NORTH SECOND STREET CLARKSVILLE, TN 37040-3478

Committee of Unsecured Creditors c/o Daniel H. Puryear, Esquire 144 Second Avenue North The Pilcher Building, Suite 300 Nashville, TN 37201-1935

MORRISTOWN METALS, INC. C/O JOE WEYANT, ESQ. FEDERAL BUILDING 116 NORTH SECOND STREET CLARKSVILLE, TN 37040-3478

ACM Specialized Materials 977 Amesbury Rd Haverhill MA 01830-1710

ALLEY-CASSETTY TRUCKING
C/O JOEL E. JORDAN
STELTEMEIER & WESTBROOK, PLLC
3326 ASPEN GROVE DRIVE, SUITE 604
FRANKLIN, TN 37067-4858

Advanced Metal Recycling 2300 N Lewis Ave Tulsa OK 74110-2120

Alexandria Auto Parts PO Box 308 Alexandria TN 37012-0308

Allied Water Service #841 PO Box 9001099 Louisville KY 40290-1099

Audubon Metals LLC PO Box 14 Henderson KY 42419 Bratten Cook 104 N 3rd St Smithville TN 37166-1415

Baker Iron & Metal 740 Rockcastle Ave Lexington KY 40505-3713 Baker Iron & Metal Co., Inc. c/o Daniel H. Puryear, Esquire 144 Second Avenue North, Suite 300 Nashville, TN 37201-1938 Bearings and Drives PO Box 116733 Atlanta GA 30368-6733 Belmont Metals 330 Belmont Ave Brooklyn NY 11207-4000

Bermco Aluminum PO Box 10145 Birmingham AL 35202-0145 Bishop Engine & Automatic Inc. PO Box 223585 Dallas TX 75222-3585 Blue Cross Blue Shield Receipts Dept PO Box 180172 Chattanooga TN 37401-7172

Bobby Hoelscher Trucking 24477 Windy Ln Warrenton MO 63383-3440 Brent Industries Inc. PO Box 63521 Cincinnati OH 45263-5251

CLS Recycling PO Box 341 Jena LA 71342-0341

Carter Funding Corporation PO Box 770416 Memphis TN 38177-0416 Caterpillar 100 NE Adams St Peoria IL 61629-6321 Chamber of Commerce
Smithville-DeKalb Co.
PO Box 64
Smithville TN 37166-0064
Cintas Corporation
3400 Briley Park Blvd N
Columbus Scrap Material Inc.
PO Box 8670
Columbus MS 39705-0012

Cintas First Aid & Safety F50 819 Fesslers Pkwy Nashville TN 37210-2902 Coface Collections, NA, Inc. 50 Millstone Road Building 100, Suite 360 Hightstown NJ 08520-1415

Courtney Gilmer, Esq.
Baker, Donelson

Commercial Metals Company PO Box 114 Joplin MO 64802-0114 Consolidated Plastics 4700 Prosper Dr Stow OH 44224-1068

211 Commerct Street, Suite 100 Nashville TN 37201-1802

DEKALB COMMUNITY BANK C/O WILSON BANK & TRUST PO BOX 768 LEBANON, TN 37088-0768 Davis Iron & Metal Inc. PO Box 2796 Fort Smith AR 72913-2796 De Lage Landen 1111 Old Eagle School Road Wayne PA 19087-1453

Ed Shaw 1650 W Jefferson Ave Trenton MI 48183-2136 Ellis Metals PO Box 337 Brundidge AL 36010-0337

Empire Refractory Specialists Inc. 1273 24th Ave Hueytown AL 35023-3667

FedEx PO Box 94515 Palatine IL 60094-4515 Frank J. Frisoli 797 Cambridge Street Cambridge MA 02141-1428 GE Capital PO Box 802585 Chicago IL 60680-2585 GEHL FINANCE PO BOX 1985 WEST BEND, WI 53095-7985

GEHL Finance BIN 88512 Milwaukee WI 53288-0001 GENERAL ELECTRIC CAPITAL CORP 1010 THOMAS EDISON BLVD SW CEDAR RAPIDS IA 52404-8247 Gehrs Industrial Sales PO Box 44721 Middletown OH 45044-0721 Grainger Industrial PO Box 419267 Dept 512-850944307 Kansas City MO 64141-6267 Greystone Logistics LLC PO Box 110945 Nashville TN 37222-0945 H&H Sheet Metal 355 Peyton St Russellville KY 42276-1682

HVFLLC 1650 W JEFFERSON TRENTON MI 48183-2136 Herschal Products Inc. PO Box 72143 Cleveland OH 44192-0002 (p)INTERNAL REVENUE SERVICE CENTRALIZED INSOLVENCY OPERATIONS PO BOX 21126 PHILADELPHIA PA 19114-0326

Industrial Rubber & Gasket PO Box 23116 Nashville TN 37202-3116 Intrametco PO Box 663862 Indianapolis IN 46266-3862

Intrametco Corporation c/o Courtney H. Gilmer Baker, Donelson, Bearman, Caldwell & Ber 211 Commerce Street, Suite 1000 Nashville, TN 37201-1819 (615)726-5747 Jacob Harris PO Box 2335

JANNEY & ASSOCIATES, CPA'S, PC PO BOX 548 SMITHVILLE, TN 37166-0548 Jack Gray Transport Services 135 S LaSalle 2407 Chicago IL 60674-2407

Lebanon TN 37088-2335

Jennings Scrap and Salvage Co. 2600 E Marshall Longview TX 75601-5996 John R. Smith, Jr.
Smith, Hulsey & Busey
P.O. Box 53315
Jacksonville FL 32201-3315
Johnson Bolt and Screw Inc.
1101 E Depot St

K B Cores 288 W South Tec Dr Kankakee IL 60901-8310

KJL Electric Motor Service Inc. 1741 Hogsfoot Rd Liberty TN 37095-9609 KorMet Enterprises Inc. 5421 W Howard St Skokie IL 60077-2618

L. Gino Marchetti, Jr. 2908 Poston Ave Nashville TN 37203-1312

Lamar and Judy Scott 113 Sherwood Drive Hartselle AL 35640-4109 Liberty Scrap Metal - Plant 2 417 Angle Rd Fort Pierce FL 34947-2528 Liberty Scrap Metal Inc. 1030 25th Ct West Palm Beach FL 33407-5357

Liberty State Bank 311 E Main St PO Box 155 Liberty TN 37095-0155 Louis Padnos Iron & Metal Co PO Box 66973 Slot 303113 Chicago IL 60666-0973 Louis Padnos Iron & Metal Co. c/o Coface North America, Inc. 50 Millstone Rd., Bldg. 100, Ste. 360 East Windsor, NJ 08520-1415

MORRISTOWN METALS, INC. C/O JOE WEYANT, ESQ. 116 NORTH SECOND STREET CLARKSVILLE, TN 37040-3478 MSC Industrial Supply Dept CH 0075 Palatine IL 60055-0075 Main Metal Recycling PO Box 2348 Jacksonville FL 32203-2348

Main Recycling Company, Inc. c/o Coface North America, Inc. 50 Millstone Rd., Bldg. 100, Ste. 360 East Windsor, NJ 08520-1415 Marlon Banks 455 Oak Grove Albertville AL 35951-6125 Middle Tenn Occ & Environ Medicine 936 Murfreesboro Rd Lebanon TN 37090-5350 Middle Tennessee Electric Middle Tennessee Electric Membership Corpora Mississippi Lime Company PO Box 220 555 New Salem Road PO Box 840033 Lebanon TN 37088-0220 Murfreesboro, TN 37129-3390 Kansas City MO 64184-0033 Middle Tennessee Natural Gas PO Box 399 Woodbury TN 37190-0399 Mixon-Nollner Morristown Shredder, Inc. NEBS PO Box 156 PO Box 3158 PO Box 88042 Carthage TN 37030-0156 Morristown TN 37815-3158 Chicago IL 60680-1042 NexAir, LLC Nashville Hydraulics OCE Imagistics Inc. 7555 East Hampden Avenue 711 51st Ave N PO Box 125 Nashville TN 37209-2125 Memphis TN 38101-0125 Suite 200 Denver CO 80231-4833 OFST PITA Metals/Scrap Processing 13824 Collections Center Dr 411 South Fort Street PO Box 330 Detroit MI 48217-1402 Melvindale MI 48121-0330 Chicago IL 60693-0138 R&R Furniture & Hardware Peony Inc. Quality Parts Supply 110 Summit Ave Ste 200 15844 S IH-35 PO Box 394 Montvale NJ 07645-1775 Bruceville TX 76630-3444 Alexandria TN 37012-0394 RSC Equipment Rental RSC Equipment Rental Randall Banks PO Box 840514 140 Campbell Rd C/O L. Gino Marchetti, Jr., Esquire 2908 Poston Avenue Dallas TX 75284-0514 Albertville AL 35951-4538 Nashville, TN 37203-1312

> Rick and Brenda Wilson 112 Davis Drive Nicholasville KY 40356-2626

Ron's Core Care 1325 Milltown Church Rd

Milltown KY 42728-5259

Rankin Oil Company Inc.

Carthage TN 37030-0177

PO Box 177

SMA PO Box 84 Alexander City AL 35011-0084

Shapiro Metal 9338 Olive Blvd Ste 200 Saint Louis MO 63132-3248

Ronald L. Grimm Ambrose, Wilson, Grimm & Durand, LLP P.O. Box 2466 Knoxville TN 37901-2466

SMITHVILLE-DEKALB COUNTY CHAMBER OF COMMERCE PO BOX 64 SMITHVILLE, TN 37166-0064

Shapiro Metals c/o Coface North America, Inc. 50 Millstone Rd., Bldg. 100, Ste. 360 East Windsor, NJ 08520-1415

PITA Metals/Scrap Processing

Roane Metals Group LLC PO Box 665 Rockwood TN 37854-0665

SETCO PO Box 809 Idabel OK 74745-0809

Schaeffer MFG. Co. Dept 3518 PO Box 790100 Saint Louis MO 63179-0100

Stacey L. Nash 26 Tribble Ln Gordonsville TN 38563-6559 Strickland's Nursery & Landscape 37331 Nashville Hwy Alexandria TN 37012-3564 Superior Aluminum Alloys LLC BankOne - Dept 77552 PO Box 77000

Swann's Rebuilding 9 Bradford Hill Rd Brush Creek TN 38547-4602 System Scale Corporation 332 Hill Ave Nashville TN 37210-4786

TRI STATE RECYCLING LLC PO BOX 8670 COLUMBUS, MS 39705-0012

TWJ PACKAGING GROUP LLC PO BOX 734 MEMPHIS TN 38101-0734 Taylor Auto Salvage 16211 Pardee Rd Taylor MI 48180-5222

Tenn Star Fire Protection & Safety 553 Middle Tennessee Blvd Murfreesboro TN 37129-5603 Tennessee Dept of Agriculture PO Box 198990 Nashville TN 37219-8990

Thomas G. Janney CPA PO Box 548 Smithville TN 37166-0548

Trademark Printing 502-A W Spring St Cookeville TN 38501-3195 Trantham Brokerage Inc. 1260 State Farm Rd Alexandria AL 36250-6042

Trantham Services Inc. 1260 State Farm Rd Alexandria AL 36250-6042

Tri Star Aluminum Management Co PO Box 68 Alexandria TN 37012-0068 Tuff Equipment Company of TN 803 Louisville Hwy Goodlettsville TN 37072-1104

Tulsa Auto Core 1130 N Lewis Tulsa OK 74110-4766

US TRUSTEE
OFFICE OF THE UNITED STATES TRUSTEE
701 BROADWAY STE 318
NASHVILLE, TN 37203-3966

University Medical Center PO Box 490 Lebanon TN 37088-0490 W W GRAINGER INC 7300 N MELVINA AVE M240 NILES IL 60714-3998

W.J. Bullock Inc. PO Box 539 Fairfield AL 35064-0539 Walter E. Dorroh, Jr. P.O. Box 1889 Jena LA 71342-1899 Wilson Bank & Trust DeKalb Community Bank 306 Brush Creek Rd Alexandria TN 37012

Wimberly Lawson Seale Wright & Daves PO Box 2231 Knoxville TN 37901-2231 ELLIOTT WARNER JONES
DRESCHER & SHARP PC
1720 WEST END AVENUE
SUITE 300
NASHVILLE, TN 37203-2619

Rick Wilson 112 Davis Drive Nicholasville, KY 40356-2626

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

IRS
CENTRALIZED INSOLVENCY
PO BOX 21126
PHILADELPHIA, PA 19114

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d)AKEL ENVIRONMENTAL RESOURCES, LLC 504 AUTUMN SPRINGS CT., #28 FRANKLIN, TN 37067-2849

(d)Bobcat of Nashville 401 W Outer Rd Valley Park MO 63088-2031 (d)RSC Equipment Rental C/O L.Gino Marchetti, Jr., Esquire 2908 Poston Avenue Nashville, TN 37203-1312

End of Label Matrix
Mailable recipients 143
Bypassed recipients 3
Total 146